PART IV

Section I-C (II)

RULES AND NOTIFICATIONS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS.

ELECTION COMMISSION, INDIA.

1, AURANGAZEB ROAD,
NEW DELHI,-11

Dated the 29th August, 1963.
Bhadra 7, 1885 (*Saka*).

NOTIFICATION.

No. 82/4/62.—In pursuance of section 106 of the Representation of the people Act, 1951, the Election Commission, hereby publishes the order pronounced on the 2nd August, 1963, by the Election Tribunal, Mysore

BEFORE THE ELECTION TRIBUNAL, MYSORE

Dated the 2nd August 1963

Present —SRI S. A PEERAN, BA, B L, Member, Election Tribunal (Addl. Dist Judge), Mysore

E P No 4/1962

Petitioner

H Nagappa, s/o Huchappa 26 years, Kamagere Village Kollegal Taluk

vs

Respondent

G Venkate Gowda s/o Girigowda, 35 years, Advocate, Kollegal, Mysore State.

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ORDER

1 This is a petition under Section 81 of the Representation of the People Act (though it is mentioned as under Section 80) of the defeated candidate, challenging the election of the respondent who has been declared elected from the Palya constituency, on 26th February 1962, to the Mysore Legislative Assembly, in the 1962 general elections, (the petitioner secured 19065 votes whereas the respondent secured 19132 votes) on the following grounds —

(1) Votes of persons who were dead long before the date of election, and of persons suffering imprisonment had been caused to be cast by personation and such votes are said to have been cast in favour of the respondent,

(2) Votes of persons who were noted in the Electoral roll as persons whose votes should be omitted, were taken and counted as valid votes in favour of the respondent This is evident from the marked electoral rolls at every polling booth,

(3) At the time of counting, as there were more tables than the number of petitioner's agents, many valid votes of the petitioner are said to have been put into the Cycle box and counted in favour of the respondent,

(4) Many votes which according to law should have been declared as valid votes in favour of the petitioner were declared in favour of the respondent,

(5) Recounting of all the ballot papers, after deducting votes polled by personation will show that the petitioner has really got more valid votes than the respondent,

(6) After the counting, sealing of all the papers was not done on the same day It was said to have been done on 1st March 1962,

(7) Counting of the tendered votes has not been done,

(8) The respondent had incurred election expenses in excess of what is allowed under the law,

(9) The election of the respondent is affected by improper reception in his favour of invalid votes and by improper counting

The petitioner therefore prayed that the election of the respondent be declared as void, and he be declared as having been elected.

2 The respondent by way of objections admitted that he secured a majority of 67 valid votes and therefore he was duly elected from the Palya constituency but refuted that his election

was vitiated on any of the grounds mentioned in para 3 of the petition, and further urged that the grounds in paras 3(1) to (7) of the petition were wholly false, vague and deliberately wanting in material facts and particulars, and as such the petition was liable to be dismissed *in-limine*.

(1) The allegations in para 3(1) of the petition that votes of dead persons, and persons suffering imprisonment had been caused to be cast by personation and in favour of the respondent are wholly false and it was urged that as far as these allegations were concerned they lacked in material particulars and could not be taken notice of and would have to be struck out The petitioner indisputably had appointed adequate number of polling agents at each of the polling stations and they could have, with reference to the marked copy of the electoral lists, specified the names, number and other particulars of the alleged dead persons and of persons suffering imprisonment, who are alleged to have been impersonated. Moreover adequate arrangements had been made at all polling stations to ensure the identification of the voters and it was open to the petitioner's polling agents to challenge their identity According to the respondent, a circular No E P P R 58/61-62 dated 31st January 1962 had been issued by the Returning officer to all the contesting candidates with a request to furnish before 5th February 1962 lists of (a) dead, (b) absent and (c) bogus voters in the electoral lists,—polling station wise, and the petitioner does not seem to have sent any such lists as there were no discrepancies in the electoral rolls It was further contended that in so far as there was no allegation that such impersonation was at the instance and consent of the respondent or his election agents, the same could not be urged as a ground for setting aside the election,

(2) The allegation in para 3(2) of the petition that votes of persons who were noted in the electoral rolls whose votes should be omitted were taken to his account as valid votes, is wholly false and again devoid of necessary particulars to enable him to enter a specific plea On the other hand it was contended that no such votes were either cast or counted,

(3) The allegations in paras 3(3) and (4) of the petition were false and untenable as at the time of counting, the petitioner had sufficient representation It is significant to note that the counting agents of the petitioner did not raise any objection nor had they challenged the votes on the grounds suggested in the above paras of the petition and such omission at the time was conclusive proof of the falsity of the allegations made,

(4) As there has been no improper reception of votes, it was contended that the question of recounting as indicated in para 3(5) of the petition does not arise The petitionor had ample opportunity to ask for a recount at the time of counting and he did not do so as he was satisfied at that time that there was no discrepancy and now that the election had gone against him, the petitioner was seeking a recount of the votes on grounds wholly untenable and misconceived,

(5) The allegations in para 3(6) of the petition are again false as there has been no violation of any of the rules in regard to counting of votes and the sealing thereof and the allegations against the officers concerned were unfounded

(6) The allegation in para 3(7) of the petition that tendered votes had not been counted is wholly untenable and misconceived According to the respondent, these votes were dealt with in accordance with the conduct of election rules of 1961 and therefore the objection was not sutainable,

(7) The allegation in para 4 of the petition regarding the expenses is not only false but lacks in material particulars. On the date of the filing of the petition i e 12th March 62, as could be gathered from the copy of the petition served upon the respondent, the respondent had not yet submitted his return of election expenses and this allegation had not been urged as a corrupt practice as defined under Section 123(6) and as such the same should not be considered

(8) As regards the allegations in para 5 of the petition it was stated that these were mere repetitions of para 3 and moreover they were extremely vague and false and liable to be struck off. It was further urged that as the grounds for setting aside the election wholly lacked in material facts, the petition is defective and the omission is deliberate and as such the pleadings tend to prejudice and embarass the respondent in the trial of the petition and the petition is liable to be dismissed *in limine*,

(9) The petition is frivolous and vexatious and lacking in bona fides,

(10) The petition is further defective in view of the non-compliance with the mandatory provisions in regard to the verification of the contents of the petition, and as such the petitioner's prayer for setting aside the election of the respondent and his further prayer to declare him duly elected, are wholly unsustainable.

On the above pleadings, the following issues are framed :—

1 (*a*) Whether votes of persons who had died long before the date of election and of person suffering imprisonment in jails have been caused to be cast by personation ?

(*b*) If so whether they have been cast in favour of the respondent ?

2 Whether the votes of persons who are noted in the Electroral list as persons whose votes should be omitted are taken and counted as valid votes in favour of the respondent ?

3. Whether at the time of counting, there were more counting tables than the number of the petitioner's counting agents and many valid votes cast in favour of the petitioner were put in the box bearing the Cycle symbo and thus were counted in favour of the respondent ?

4. Whether many votes which according to law should have been declared as valid votes in favour of the petitioner were declared in favour of the respondent ?

5. Whether the sealing of all the ballot papers was not done on the day of counting but was done on 1st March 1962 ?

6. Whether the respondent has incurred election expenses in excess of what is allowed under law and is such an allegation a valid and sufficient ground to declare the election of the respondent as void ? (Deleted *vide* order dated 30th June 1962)

7 Whether the election petition is defective for the reasons urged in paragraphs 11 and 13 of the respondent's statement of objection ? If so what is its effect ?

8 Whether in the absence of material facts as required under law, the election petition is maintainable in law ?

9. Is the petitioner entitled to the relief of his being declared as a successful candidate in the event of the election of the respondent being declared invalid ?

10 To what reliefs if any are the parties entitled ?

4 The petitioner examined 105 witnesses including himself, and the respondent examined 15 witnesses including himself. By mistake PW 36 K R Ranganna when examined subsequently has been given PW numbers 48 and 97.

5 On the respondent pressing for a finding on Issues 7 and 8, my learned predecessor heard arguments and by his order*

* Published as an annexure

dated 30-6-1962 held those issues against the respondent, and also ordered that Issue No 6 be deleted as the petitioner's counsel withdrew the said allegation. He further directed the petitioner to amend the verification in the petition as required On 14-8-1962 the respondent filed I A 2 under Order 6, Rule 5 Code of Civil Procedure, read with Section 90 of the R P Act, supported with an affidavit, praying that the petitioner be called upon to furnish a list with particulars of the persons said to be dead and suffering imprisonment whose votes are said to have been cast in favour of the respondent The petitioner not only filed objections to I A 2 but furnished a list of 400 persons booth-wise, who were said to be dead long before the date of election, and whose votes had been caused to be cast in favour of the respondent. My learned prodecessor, by his order dated 27-8-1962 rejected I A 2 The respondent challenged the correctness of the findings of this Tribunal on Issues 7 and 8 and the order on I A 2, by way of Writ Petition No 1123/62 before the High Court of Mysore, and their Lordships by their o der dated 19 9-1962, dismissed the Writ Petition On 29-9-1962 the respondent filled I.A 4 under Order 14 Rule 5 and Section 151 Code of Civil Procedure, for amending Issues 1 (b), 2 and 10, and I A 5 under Order 6, Rule 17 and Section 151 Code of Civil Procedure, praying for permission to amend the written statement Objections were filed by the petitioner to both I.A Nos 4 and 5 on 15-10-1962 and my learned prodecessor by his order dated 22-10-62 dismissed both these petitions, holding that as there was no recrimination petition under Section 97of the R P Act, the amendments sought were intended to circumvent the provisions of Section 97 and also to delay the proceedings I A 6 under order 6, Rules 17 and 18 Section 151 of Code of Civil Procedure, was filed by the petitioner on 18-10-1962 praying that he be permitted to amend the petition by adding the verification as directed by the Tribunal The respondent filed his objections and on 3rd November 1962 after hearing both sides, my learned predecessor allowed I. A 6 and the petition was duly amended On 15th March 1963 the respondent filed I A. Nos 8 and 9 under Section 151 Code of Civil Procedure read with Section 90 of the R P Act I A 8 was for making certain electoral rolls as Exhibits, which had not been got marked by the petitioner to ascertain whether disenfranchised persons had cast votes I A 9 was for taking out the ballot papers said to have been issued to persons, who according to the petitioner were alleged to be dead, and for deducting such votes if any that have gone to the petitioner Objections were filed and arguments heard, but both the counsels represented that the consideration of these I As, could be taken up along with the final order

6 Before taking up the issues for consideration I would like in the first instance to deal with the contentions of the respondent's learned counsel that the petition should be dismissed *in-limine* as it does not comply with the provisions of Section 80 and 81 of the R P Act and Order 6, Rule 18 CPC The argument was advanced in this manner · Every petition under Section 80 had to be within 45 days as contemplated under Section 81 and should contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down under the Code of Civil Procedure for the verification of the pleadings as per Section 83 and unless a petition is in conformity with these provisions of the Act, it would not be a petition coming within the meaning of Section 80 The learned counsel for the respondent developed this argument further and contended that the petition in the first instance did not contain any verification as required under Section 83 (c) and this fact was brought to the notice of the Tribunal and the Tribunal by its order dated 30th June 62 directed the petitioner to amend the verification in the petition as required by law, and when such an amendment was allowed, it would be an amendment coming within the meaning of Order 6, Rule 18 CPC and when no time is fixed in the order, it has to be deemed that the amendment should be made within a fortnight from the date of the order, and as the petitioner failed to amend his petition within the said period, the petition therefore is liable to be dismissed It may here be mentioned that the petition was actually amended on 3rd November 1962 While allowing the amendment, the question whether a verification was one under the Act or not was considered and it was held that the amendment sought for was only a formal one which did not affect the substance of the petition or the pleadings in the case Order 6, Rule 17 deals specifically with the amendments in respect of the pleadings, and not the form The verification that is insisted upon is only a form which does not in any manner affect the pleadings Therefore to say that the petition is not one in conformity with Section 83 and as such not a petition that is filed within 45 days as laid down under Section 81 would not be correct The amendment that was allowed in this case was only in respect of the verification and it was not in respect of any of the pleadings It could be understood if the amendment was in respect of the pleadings in the petition, which in other words would mean permitting the party to put forward a case other than the one he has set up in his pleadings, and such an amendment would necessarily have to be in conformity with Order 6, Rule 18 CPC so as to give the opposite side a reasonable opportunity of meeting the

case and setting up his own case. Moreover, this objection that the petition was not in conformity with either Section 83 or 81 of the R. P Act and that the amendment should not be allowed was considered by the Tribunal at the time of permitting the petitioner to amend his petition. I, therefore, feel the respondent is concluded by that order

7. I shall now take up Issue No. 3 The pleadings in respect of this issue are to be found in paras 3 (3) and 5 of the petition and para 5 of the objection statement, and the evidence in this behalf is that of PWs 58, 59 and RW1 and the documents relevant are Exs P 12, P 16 and P17. It is evident from RW1's evidence that there were 18 counting tables As could be seen from Ex P16, the petitioner had appointed ten counting agents and as per the endorsement on page 13 of Ex. P16 his election agent had received ten passes But the number of counting agents actually present at the time of counting were only 9 as admitted by RW1 the Tahsildar. A reading of para 3 (3) of the petition gives an impression that because of the lesser number of counting agents, many ballot papers of the petitioner were counted for the respondent As there is no specific allegation that those entrusted with the duty of counting these votes had deliberately and with a design counted the votes of the petitioner in favour of the respondent, merely because there were lesser number of counting agents than the number of counting tables, it would not be a basis for an inference that the valid votes of the petitioner have been counted in favour of the respondent The officers concerned with the duties of the counting of the ballot papers, it is expected, would have done their duty honestly and sincerely Is it therefore significant to note that any allegation against these officers is not to be found in the pleading and much less in the evidence, which I shall now discuss Both PWs 58 and 59 as could be gathered from their evidence were the counting agents at the time of counting, PW 58 for the congress candidate for the Parliamentary seat, and PW 59 for the petitioner PW58 does not allege any irregularity against any of the officers at the time of counting If there were any such irregularities, or deliberate acts on the part of the officers concerned, it goes without saying that he would have also made a loud complaint, not only before the Returning Officer but at the time when he was examined in court. PW59's evidence is also not helpful to the petitioner, as according to this witness, the sorting was that the officers would pick out 50 or 60 ballot papers and after verifying the marks, the papers used to be placed in the boxes of the candidates to which the ballot papers referred to, and after finishing the

orting of these 50 or 60 ballot papers, they would pick out another 50 or 60 and follow the same procedure. While sorting out ballot papers in this manner mistakes were committed by these officials by wrongly placing the ballot papers but on being pointed out those mistakes were immediately corrected and the officials adopted the former procedure till about 9-30 A M , when the witness requested them to sort out the papers in a different manner and they accepted his suggestion. The evidence of this witness indicates that ballot papers were wrongly placed but on being pointed out the mistakes were corrected immediately This evidence does not disclose that the mistake, if any, was in respect of the petitioner's votes only The mistake, seems to be in respect of the votes of both the candidates but then on the mistakes having been pointed out the officials have immediately corrected the same Further, PW59 states "there were two boxes for the Assembly, one for the petitioner, and another for the respondent, and a third for putting the doubtful votes . when the ballot papers were taken out from the candidates' boxes for counting, they were verified to see that the ballot paper referred to the particular candidate and later they were counted and bundled into 50 each". This procedure rules out to a very large extent, any possibility of the votes of the petitioner being counted in favour of the respondent, and it must be mentioned here that this witness has not stated that votes of the petitioner were as a matter of fact, counted in favour of the respondent The only other evidence in the case is that of RWI the Assistant Returning Officer, which also, it may be mentioned, does not disclose that irregularities were committed during the counting and it cannot also be inferred that because of these irregularities, the petitioner's votes may have been counted in favour of the respondent All that was sought to be elicited from this witness was the number of counting tables and the number of persons engaged in the counting Putting these two together, and the evidence of PW59 that there were some mistakes at some stage, it was strenuously contended that as there were lesser number of counting agents than the counting tables, there was a strong inference in favour of the petitioner that his votes were counted in favour of the respondent That there were more number of tables than the counting agents of the petitioner, cannot be doubted, but it was incumbent on the petitioner to show that these tables were not contiguous and were at different places This the petitioner has failed to establish On the other hand, there is positive evidence that the counting was in the same hall and a reading of the evidence of PW59 and RWI on this point gives an impression that the tables must have been contiguous or close to each other. If this was so,

there can hardly be any complaint that they were unable to keep the track of counting or the scrutiny of the ballot papers In fact there have been no complaints by any of the counting agents, either orally or in writting, in respect of the alleged irregularity Moreover there were nine other counting agents of the congress parliamentary candidate at the time of the counting and as the petitioner was also a congress nominee, the counting agents of both these candidates would have been working in close co operation and guarding the interests of the congress candidates It was here that the learned counsel for the petitioner relied upon a direction of the Election Commission as to the manner in which the Returning Officer was to fix the number of counting agents for each of the candidate but not exceeding 16, as found in Rule 52 of the Conduct of Election Rules 1961 According to him, the notification contemplated that the number of persons engaged in the counting *viz* the counting supervisors, should be divided by the number of candidates and the quotient plus one should be the number of counting agents to be allowed provided this figure did not exceed 16 According to Ex P12, the order under which the counting supervisors were appointed, the number was 54 and dividing this by the number of candidates *viz* 6, the quotient would be 9 and plus 1 would be the number of counting agents that would be permissible even according to this Rule This is the number that has been allowed It may also be mentioned that ten passes have also been issued to the petitioner As such, there is no infringement of this rule The above discussion has been on the assumption that there has been such a notification by the Election Commission even though the learned counsel for the petitioner did not place this notification on record by summoning either the Chief Electoral Officer in Mysore or the Returning Officer to produce the same. Even though the petitioner had not specifically pleaded that because of this irregularity or the improper counting of his votes in favour of the respondent, the result of the election of the returned candidate had been materially affected, para 5 in a way could be taken to mean that the petitioner has pleaded it, but the evidence on his side *viz* that of PWs 58 and 59 does not in any manner support this plea as they have not complained that the votes of the petitioner were in fact counted in favour of the respondent The petitioner has not sought to examine the very persons who gave him the information that his votes were counted in favour of the respondent, or reasons best known to himself The inference that these persons would not have supported the petitioner had they been examined, would not be incorrect Therefore my finding on Issue 3 is that even though there were more counting tables than the

counting agents, many of the petitioner's valid votes were not counted in favour of the respondent

8 Coming next to Issue No 4, the pleadings are to be found in paras 3, 4 and 5 of the petition and para 5 of the objection statement and Exs P6, P10 and P 11 are the documents that have some bearing on this issue and the evidence is thatof PWs 58,59 and RW1 I have earlier disussedthe evidence of PWs and 59 while considering Issue No 3,and held that their evidence does not disclose that there has been any irregularity at the time of counting i Their evidence is again devoid of any material to indicate that vald votes that should have gone to the petitioner were counted as votes in favour of the respondent It is not specifically pleaded by the petitioner that out of the doubtful votes many votes that should have gone in his favour have been counted for the respondent, but in a way it could be inferred from para 3 that this is his grievance The petitioner has not placed any evidence in support of this plea except his bare statement before the court, but then he was not present at the time of counting, and as admitted by him this is a piece of information he gathered He has not chosen to examine the persons who gave him this information Further, neither PW 58 nor PW59 have stated in court that the decision on the doubtful votes was wrong They, or the other counting agents of the petitioner, have not preferred any objections either to the Asst.Returning Officer or the Returning Officer either in writing or orally, and as such it is not possible to accept the bare hearsay statement of the petitioner that may votes which according to law should have been declared as valid votes in his favour were declared in favour of the respondent It was argued on his behalf that the decision in respect of the doubtful and rejected votes was by a person not competent to do so under law The premises for this argument was sub-section (2) of Section 22 of the R P Act, and the definition contained in Rule 2 (1) (j) of the Conduct of Election Rules Sub-section 2 of Section 22 reads thus Every Assistant Returning Officer shall subject to the control of the Returning Officer be competent to perform all or any of the functions of a Returning Officer , provided that no Assistant Returning Officer shall perform any of the functions of the Returning Officer which relate to the scrutiny of nominations unless the Returning Officer is inevitably prevented from performing the functions", and the definition in Rule 2 (1) (j) of the Conduct of Election Rules reads "Returning Officer" includes any Assistant Returning Officer performing any functions he is authorised to perform under sub-section (2) of Section 22" The learned counsel would have the clause "subject to the control of the

Returning Officer" to mean that the Returning Officer must authorise him either in writing or orally before the Assistant Returning Officer could function as the Returning Officer or perfrom any of his duties For this purpose he further relied upon the definition contained in the rules extracted above, and according to him the word "control" meant authorisation by the Returning Officer It is true that one of the meanings of the word "control" found in the dictionary is "authority" But, I am unable to agree with his contention that the word control in this section necessarily means to authorise. A plain reading of subsection (2) of Section 22 indicates that this section authorises the Assistant Returning Officer to perform all or any of the functions of the Returning Officer. Section 23 of the Act makes further reference to the Returning and Assistant Returning Officers, and in terms expresses that reference in this Act to the Returning Officer shall, unless the context otherwise requires be deemed to include an Assistant Returning Officer performing any of the functions he is authorised to perform under sub-section (2) of Section 22. Therefore, the authority if any for the Assistant Returning Officer to perform all or any of the functions under the Act or the Rules, is under sub-section (2) of section 22 If the Assistant Returning Officer has performed any of the functions of the Returning Officer, it cannot be said that they were acts of a person who is not duly authorised under the law The learned counsel for the petitioner attempted to make out a case for the petitioner that the rejection of votes by the Assistant Returning Officer was not firstly in accordance with law and secondly not by a person competent to do so As regards the first of the contentions, the petitioner has not taken any such plea nor led any evidence to show that the rejection was improper as both PWs 58 and 59 have not spoken even a word about it The parties were also not at issue on this point. RW1 the Tahsildar has stated that the Returning Officer was present at the time of counting and at the time he was supervising the counting and scrutinising the doubtful votes, which therefore indicates that he was acting within the terms of the Act, *viz* under the control of the Returning Officer The petitioner, it may be noted, has not come out in his petition with an allegation that the Assistant Returning Officer had not been duly authorised to perform these functions Further there is no issue in this behalf and hence the second contention has also to be rejected. Therefore my finding on this issue is in the negative

9 The pleadings in respect of Issue 5 are to be found in para 3 (vi) of the petition and para 7 of the objection statement

and the evidence is that of PW 4, PW 57, PW 58, PW 107, RW 1 and RW 15, and the documents are Exs. P3, P4, P5 and P5 (a) Even though in the petition, it is alleged that the sealing of the ballot papers was on 1st March 1962, the evidence in the case, and specially that of the Tahsildar RW 1, clearly discloses that the sealing was done not on the day the counting took place but on 2nd March 1962. There is no allegation in the petition that this irregularity has materially affected the result of the returned candidate, nor do the petitions PW 107, PWs 57 and 58 say so. The petitioner PW 107 when cross-examined on this point has stated, "I do not know if the result of the election has been materially affected by having the ballot papers etc , sealed on 2nd March 1962" In view of this statement, it is clear that it is not his case that because of the non-sealing of the ballot papers on the day of counting, it has materially affected the result of the election and much less that of the returned candidate But then, it has next to be seen whether the sealing of the ballot papers, etc , was actually on 2nd March 1962 and there was or not substantial compliance with the rules in this behalf on the day of counting, *viz* 26th February 1962 RW 1's evidence taken along with Ex P4 the report of the Returning Officer discloses that after the counting of Palya Constituency votes was over, the ballot papers which had been tied in bundles of 50 each were put in a cover and this cover was gummed and on the top of this cover the particulars as contemplated under sub-rule (3) of Section 73 of the Conduct of Election Rules, 1961 had been entered and that this packets were later put into the deal wood boxes and after the lid was nailed, the boxes were fastened with ropes sealed, and these boxes were placed in the lock-up cell and this in its turn was again locked and sealed. The argument was that there should have been strict compliance with sub-rule (3) of Section 57, *viz* , the cover containing the ballot papers should have been sealed immediately after the counting and since this has not been done, there has been an infringement of this rule It is not every infringement of a rule that gives a right to challenge the election But such an allegation should be coupled with the grievance that it has materially affected the result of the er turned candidate There is no such allegation either in the pleadings or in the evidence. RW 1 has stated that the deal wood boxes were removed on 2nd March 1962 from the Cell and the packets taken out and duly sealed and later put back into the said boxes and these boxes duly sealed, were sent to the Treasury for safe custody. The explanation he offers for not having sealed these paper packets on the day of counting, dose not seem to be untrue as the counting of the other constituencies was taken up immediately and the officials were not sure that there was sufficient

room in the Treasury for lodging of the boxes It is not clear from the evidence of PWs. 57 and 58 that they actually saw the ballot papers as none of these persons entered the hall All that could be gathered from their evidence is that they saw the bundles being packed These bundles which they refer to may have been the packets containing the ballot papers. Even thought PW 57 has stated that the ballot papers were in the form of packets and these packets had been tied in bundles, his next answer that he did not examine any of the packets to find out whether they had been sealed and his other answer that he did not go inside the hall, shows that he could not have observed the ballot papers as such. The answers in his cross examination show that he has some grievance against the respondent as the latter had appeared against him before the Assistant Commissioner and the Government in respect of a license for his Rice mill In these circumstances, it may not be safe to place any reliance on his evidence, specially when there have been no allegations, either against the Returning Officer, or RW1 that they were siding the respondent The petitioner could well have examined the other counting agents or the candidates who were present when the counting of the next constituency was taken up and as this has not been done, the explanation offered by the Assistant Returning officer RW1 supported by the report Ex P4 could be accepted Therefore, I am of the opinion that there has been substantial compliance with sub-rule (3) of Rule 57 of the Conduct of Election Rules But, it must be mentioned that the officers in charge of this work, *viz*, RW1 and the Returning officer could have avoided giving room to any doubt or suspicion about their conduct My finding on Issue No. 5 is in the negative.

10 The pleadings in respect of Issue Nos 1 (a), (b) and 2, are to be found in paras 3(1), (2) and (5) of the petition, and paras 3, 4, 6 and 10 of the objection statement In the petition, apart from the allegation that votes of persons dead long before the date of election and of persons suffering imprisonment on the date of the election, had been caused to be cast in favour of the respondent, there is the further allegation that votes of persons who were noted in the Electoral rolls as persons whose votes should be omitted were taken and counted as valid votes in favour of the respondent. The particulars in respect of these votes had not been furnished It was only after the respondent filed I A 2 calling for particulars that the petitioner filed a list of 400 persons alleged to be dead. The petitioner has let in evidence in respect of only 104 He has examined the relations in respect of some 25 out of these 104, and

relied upon the entries in the Death Registers in respect of 34 The petitioner has let in evidence in respect of only 3 persons who were alleged to be suffering imprisonment on the date of the election and stated that the marked electoral rolls would reveal the number of disenfranchised persons who have voted In respect of the persons who were said to be suffering imprisonment on the date of the election, the petitioner has examined PWs 1, 5, 62, 69 and 95 and relied upon Exs P1 (a), P2 (a), P2 (b), P25 and P43 The name and description of the father in Sl. No 3387 in Ex P25 is Marisetti son of Marisetti aged 22 years and residing in House No 7 77, whereas the evidence of PW1 in respect of the name and description of Convict No 6996 with reference to the Convict Register Ex P1 as per Ex P1 (a) is Mari *alias* Deva son of Konda *alias* Marisetti, aged 22 years, and his place of residence is entered as Madhuvanahalli in Kollegal taluk. The evidence of PW5 M R Boovaji the Supdt of the Jail is to the effect that Convict No 6996 was not eligible for release on parole because he had been sentenced to only two years R I PW62 Shivanna is the village manegar and according to him it was he who sent the FIR in the case in respect of this Marisetti and was present in court when he pleaded guilty and was convicted and sentenced to 1½ years imprisonment He further states that this Marisetti was also known as Mari *alias* Deva, but he has not explained as to why the *aliases* are missing in the electoral roll PW69 who alleges to be the uncle of this convict states that he was convicted a year ago for house breaking and theft He has given out the *aliases* of this Marisetti and the *aliases* of his father who is alleged to be his elder brother As there is material difference, not only in the names of the person and his father against Sl No 3387 in Ex P25, and Ex P1 (a), it would be rather unsafe to hold that these names refer to one and the same person As regards the other two persons, *viz*, Siddasetti son of Dasasetti, and Devarasasetti son of Ravalasetti, Sl. Nos 455 and 515 in the marked electoral roll Ex P43, and the names of persons mentioned in Exs P2 (a) and P2 (b), appear to be identical But there is no satisfactory evidence to hold that the persons mentioned in Exs P2 (a) and P2 (b) are the same persons as those whose names are found against Sl Nos 455 and 515 in Ex P 43 as the close relations of these persons who are available have not been examined and especially when PW 95 has stated that there are a number of persons in his village who have the-same names.

11 Before I take up the discussion in respect of the 104 dead persons, I feel it necessary to take into consideration, the

pleading in this behalf which is as follows:—"Votes of persons who were dead long before the date of election, and of persons suffering imprisonment *have been caused to be cast* by personation and such votes are said to have been cast in favour of the respondent" This allegation implies that either the respondent, or some one on his behalf was responsible for this personation and casting of votes, but no evidence has been let in that either the respondent or some one interested on his behalf were responsible for this personation and casting of the votes In fact the learned counsel for the petitioner conceded that he was not alleging and could not allege that either the respondent or some one on his behalf were responsible for this personation and casting of the votes , but the evidence let in, in this case is that votes of dead persons had been exercised by impersonation This, therefore, means that there is considerable variation between the pleading and the evidence let in. Usually when there is variance, it is not open to the petitioner to call upon the Tribunal to look into the evidence and hold the issue in his favour Support for this view is to be found in the decision reported in AIR 1960 Punjab 614 (Sri Gurbanta Singh *Vs.* Piara Ram Jaggu Ram) wherein it has been held .

> "In an election case no evidence could be allowed to be led—and at least the same cannot be looked at—for making out for the petitioners a case which they did not set up in the petition.
>
> Even in a civil case, a party cannot be allowed to set up a case which is not pleaded and the rule must apply with equal, if not with greater force to an election petition".

It was argued by the learned counsel for the Respondent, that the correctness of a voter's list or its finality could not be questioned by a Tribunal, and the same could only be questioned in the manner laid down under the Act and the Rules thereunder, and if this were so, every person mentioned in the Electoral roll must be presumed to be a voter His further contention was that if the Tribunal were to give a finding that some persons in the electoral rolls were dead, it would virtually be correcting the final lists which this Tribunal is incompetent to do, and in support of this proposition he relied upon the ruling reported in AIR 1963 Supreme Court 459 (B M Ramaswami *Vs* B M Krishnamurthi) In that decision, the election under the Mysore Village Panchayath and Local Boards Act was challenged on the ground that the appellant's name was wrongly included in the list Their Lordships

dealt with the relevant provisions of the Act and as the electoral roll of the Mysore Legislative Assembly for the time being in force for such part of the constituency of the Assembly as is included in the Panchayath constituency was deemed for the purpose of that Act to be the list of voters of the Panchayath constituency, they considered Sec 10 of the R P Act 1950 and the procedure that was to be adopted for correcting such a list as contemplated under Sec 23 of the R P Act 1950 and Rule 26 of the Representation of the People (Preparation of Electoral Rolls) Rules and in sub-para 4 of para 8, Sec 24 of the R P Act 1950 and held in para 10 —

> " The act proceeds on the basis that the voters list is final for the purposes of the election Under Sec. 10 of the Act, 'every person whose name is in the list of voters of any panchayath constituency shall, unless disqualified under this Act, or under any other law for the time being in force, be qualified to be elected as a member of the panchayath The disqualifications are enumerated in Sec 11 If he was not disqualified-in the present case the finding is that there was no such disqualification-the appellant was certainly qualified to be elected as a member of the Village panchayath "

In the instant case, the Tribunal is not called upon to consider the correctness of the electoral roll, and it is not the allegation of the petitioner that the electoral roll has been not properly prepared His allegation simpliciter is that votes of dead persons have been cast by personation This does not amount to calling upon the Tribunal to consider that the electoral roll is incorrect and not prepared properly As could be found from the very decision cited above, the Tribunal would be competent to investigate and find out if the name of a person who is disqualified under the Act is found in the list of voters, and death is the greatest disqualification It was also open to the petitioner to show that certain persons whose names are found in the list could not have voted because of certain circumstances or causes present at that time, and one of the causes would very well be the death by which a person would be prevented from exercising his franchise It would therefore be open to the Tribunal to find out whether, or not, a person was alive that day and such a finding would not tantamount to correcting the voters list

12 The presumption that the person whose name is found in the voters list is not attended with any disqualification and is

ordinarily a resident of that constituency, has to be borne in mind, while assessing or taking into consideration the evidence in respect of the alleged dead persons Unless the petitioner brings in substantive and tangible evidence it would not be possible to connect the persons alleged to be dead with the persons whose names are found in the electoral rolls The petitioner has relied mostly on the evidence of the Managars, who it must be remembered were also the persons responsible in getting the draft electoral rolls duly published and sending up objections if any They were also the persons who were maintaing death Registers As both the functions were being performed by the same persons, it could reasonably be expected that they would have corrected the lists or at least sent lists of persons who were dead, and whose names should be deleted from electoral rolls and therefore their evidence calls for a closer scrutiny and if any discrepancy or doubt respecting the identity of the person *viz*, name,alias if any, age, Parentage and surrounding circumstances is to be found between the entries in the death registers and the electoral rolls, it should necessarily go to the benefit of the respondent

13. I shall now take up the evidence of the four Managers or village patels, who have spoken to the death of certain persons, and seek to connect them with the names in the electoral rolls Pw 62 G Shivanna, Managar, states that the death of Basavasetti, son of Siddasetty Sl No 1329 in Ex P 20 is entered in the death register as per Ex P 66 (a), but the age of this person is not mentioned He further states that the deceased was survived by his wife and brothers These persons are not examined There is difference in the entries regarding the father's name His further evidence is that a number of other persons in his village have the same name Therefore I am unable to accept his evidence that this Basavasetti is the person referred to in Sl No 1329 in Ex P 20 He further speaks to the death of Puttasidda, son of Puttasidda Sl No 2756 in Ex P25 But there is no entry in the death register even though the information was said to have been given to him by the deceased's father In the absence of any entry in the death register, his oral evidence cannot be accepted Regarding Sl No 1626 in Ex P23 Subbasetti, son of Gurubasava Setti, the evidence of PW 62 is that he is survived by his wife, father and father-in-law None of these persons has been examined There is no entry in the death register As such his evidence and that of PW63 cannot be accepted Regarding Sl No 106 in Ex P43 Devamma, wife of Nanjegowda, PW 62 says that she died on 23rd April 1961 and

the entry in the death register is Ex P85(a) But it is interesting to note that the husband's name in the death register is noted as Aa Ja Ke Nanjegowda and hence there is difference from the name in Ex P43 Sl No 106 In view of this difference, the evidence of PW95 cannot also be accepted Sl. No 393 in Ex P43 Nagalingachari, son of Puttachari, PW62 says is dead, and the entry in the death register is Ex P89(a) But a perusal of Ex P89(a) shows that the father's name of the deceased is not Puttachari but Putta Rachachari Hence it cannot be said that the death of the person mentioned against Sl. No 393 in Ex P43 has been proved. PW 62 further states that Sl No. 442 in Ex P43 Puttasetti bin Siddasetti's death is noted as per Ex P89(b) in the death register But in Ex P89(b) the deceased's name is shown as "C Puttasetti" and the father's name is not at all mentioned. Under these circumstances, I refuse to accept the statement of PW62 and PW91 that Sl No 442 in Ex P43 relates to the entry in Ex P89(b) Sl No 536 in Ex P43 Lingasetti, son of Lingasetti is said to be dead and PW 62 states that his death is entered at Ex P89(c) But the father's name in Ex P89(c) is shown as Modde Lingasetti and it may also be mentioned that there is a great difference in the age of the person as entered in Ex P43 at Sl No 536 and Ex P89(c) entry Therefore it would be unsafe to hold that Sl No 536 in Ex P43 refers to the person whose death is noted at Ex P89(c). Sl No 579 in Ex P43 refers to one Siddachari, son of Siddamariachari whose death, according to PW 62 is entered as per Ex P89(b) but in Ex P89(b) the name is Siddamari Siddamari It is obvious that this entry cannot refer to the person mentioned in Sl No 579 at P43 As such I cannot accept the evidence of PWs 62 and 91 The death of Sl No 826 in Ex P60(b) Kempegowda, son of Chikkamarigowda, aged 39 is spoken to by PW 62 as having been entered in Ex P89(e) The name entered in Ex P 89 (e) is "Ma Ke-Chikkamari" and the father's name is shown as Kempegowda but in Colums 30 and 31 the name of the father, who is the informant, is shown as Shivaramegowda and the age of the deceased is shown as 65 years Hence the person mentioned in Sl No 826 of Ex P60(b) cannot be the same person as mentioned in Ex P 89(e) Sl No 906 in Ex P 60(b) Chikkaputtegowda, son of Devegowda's death is said to be mentioned as per Ex P 85(b) which shows the father's name of the deceased as "Dhe Thibbe Devegowda" There is also considerable variance in the age as mentioned in Ex P 60(b) at Sl No 906 and Ex P 85(b). Therefore I would hesitate to accept that both the entries refer to one and the same person The death of Sl No 1160 in Ex P 60(b) Chamegowda, son of Nanjegowda, 51 years of age, is

said to be mentioned at Ex P 85(c) The name of the deceased in Ex P 85(c) is "Ku Na Chamegowda" and his wife is shown as Ningajamma whereas in Ex P 60(b) at Sl. No 1160 it could be gathered that this Chamegowda's wife's name is not Ningajamma but Thimmajamma Hence it is not possible to say that the entries refer to one and the same person The death of Sl No 1214 in Ex P 60(b) Madegowda, son of Rachegowda is said to have been entered as per Ex P 85(d) but there is some difference in the father's name of the deceased and this does not tally with that mentioned in Ex P 60(b) at Sl No 1214 and one other factor is that the name of the wife of the deceased is shown as Manchamma in Ex P 85(d) whereas her name is not to be found at all in the voters' list near about the alleged deceased person. This being so, it would not be safe to conclude that both the entries refer to the same person The death of Sl No 2493 in Ex P 61(a) Lingamma, wife of Puttu is said to have been mentioned at Ex P 85(e), but at Ex P 85(e) the name is Lingi, a name which is found in Ex P 61(a) as the mother of one Venkatadasu Sl No 2494, and moreover as no near relations have been examined, I am unable to hold that these entries are in respect of the same person. The death of Sl. No 148 in Ex P 59(a) voters list, Chikki, wife of Kongegowda is said to have been entered at Ex P 90(a) but this entry looks suspicious as the same has been erased and re-written Even though very close relations like the son are available and they have not been examined, the solitary statement of Pw 62 with this suspicious entry would not be enough to safely hold that these two entries refer to the same person The death of Sl No 202 in Ex P 59(a) Kendegowda, son of Nanjegowda is said to be entered at Ex P 91(a) There is nothing in the cross-examination of Pw 62 to show that the entries do not refer to the same person Therefore I accept his evidence in respect of Sl No 202 in Ex P 59(a) the death of Sl. No 293 in Ex P 59(a) Chikkamadegowda, son of Chikkasiddegowda is said to have been entered at Ex P 91(b) but the ages as mentioned in these two entries differ by 25 years and hence I reject his evidence The death of Sl. No 599 in Ex P 59(a) Kenchamallegowda, son of Channegowda is said to be entered at Ex P 91(c) but the ages mentioned in these two entries differ considerably Hence I reject the evidence. As regards the death of Chikkanagegowda, son of Venkategowda Sl No 673 in Ex P 59(a), Pw 62 states that the entry is at Ex P 91 (d), But a perusal of the ages mentioned in these two entries shows that there is a difference of 19 years As such it would not be safe to conclude that both the entries refer to one person The death of Sl. No 719

in Ex P 59(a) Bolegowda, son of Mallegowda is said to be at Ex P 91(e) There is discrepancy in the age, which is about six years, and according to me it cannot be ignored and thus the evidence in respect of this person should also be rejected The death of Sl No 857 in Ex P 59(a) Hindi, wife of Kempahindi said to be entered at Ex P91(f) cannot be accepted as having been proved because Ex P91(f) discloses that it is a man and not a woman and the wife's name is also shown as Lakshmi In these circumstances, I refuse to accept the evidence of both Pws 62 and 88 Sl No 899 in Ex P59(a) Sidda son of Javara said to be entered at Ex P91(g) is relied upon to prove his death As there is a difference of five years in the age mentioned in these two entries it is again not safe in a case of this type to hold that the entries refer to the same person Though Pw 89 is also examined to prove his death, but this does not advance the case of the petitioner any further The death of Sl No. 35 in Ex P39 Kenchegowda son of Thimmegowda is spoken to by Pws 62 and 73 and this person is said to have committed suicide in which connection Pw 62 sent the FIR. It is surprising that Pw 62 has not made any entry in the Death register even though he was bound to do so The counterfoil of the FIR register is not produced nor any explanation offered as to why this death was not entered in the death register In these circumstances, I refuse to accept his evidence.

14 The next Manegar in the above series is Pw 71 Siddalingaswamy According to him the death of Sl No. 121 in Ex P 29 Malaya son of Mashana is entered in the death register as per Ex P77(a), wherein the wife's name is mentioned as Malli but in Ex P 29 the wife's name could be gathered as Chikkathayamma Sl. No 122 living in the same house Therefore, it may not be reasonable to connect the entry Ex P 77(a) with Sl No 121in Ex P29 In view of this, the evidence of Pw 72 would be of no avail to the petitioner The death of the person mentioned in Sl No. 282 in Ex P 29 Malaya son of Malaya is according to the witness entered at Ex P 77(b) The discrepancy in age is about six years between the entry in Ex P 29 and at Ex P 77(b) and moreover the name of the wife does not find a place in Ex P29 Hence this evidence is unacceptable even though Pws 72 and 86 have spoken about his death The death of Sl No 496 in Ex P 29 Seege Pitilina Seege, by accidental drowning and to his having sent the FIR under acknowledgements Exs P 113 (b) and (c), has been spoken to by Pw 71 Pw 72 also speaks to the death of this Seege but both the witnesses stated that this Seege was the son of Pitilina Seege

whereas in Sl No. 496 in Ex P 29 and the report Ex P 113(a) refer to this person as a woman and wife of Pitilina Seege It is not necessary to refer to the evidence of Pw 4 Seeganaika in respect of this person when there is such a glaring discrepancy in the evidence adduced by the petitioner Hence, I reject this evidence Sl No 85 in Ex P 29 Siddi wife of Malla, whose death it is stated is entered at Ex P139(a) death register There are four persons having the same name at Sl Nos 55, 184, 239 and 304 in Ex P29 It is seen from Ex P29 that a ballot paper has not been issued to Sl No 184 This being the state of affairs, it would be hazardous to connect the person mentioned in Ex P 139(a) as Sl No 85 n Ex P 29, as it could very well be Sl No 184 Therefore the evidence of Pws 71 and 72 is rejected The death of Sl No 1923 in Ex P33 Madasetti son of Channapilla, 74 years, is said to be entered at Ex P 77(c) The deceased's name in Ex P77(c) is shown as Chennapilla Madasetti son of Channapille Setti I do not find much discrepancy either in the name given in Sl No 1923 of Ex P 33 or the entry in Ex P 77(c) and hence I am inclined to accept the evidence in this behalf

15 The next Manegar is PW 79 Rudraiah He has stated that the death of the person mentioned in Sl No 71 in Ex P31 Nanjamma, wife of Mak is not entered in the death register A person who ordinarily should enter such deaths in the register, fails to do so, I find it rather difficult to accept his oral evidence in this behalf The death of Sl No 265 in Ex P31 Batta, son of Tirumara is said to be entered at Ex P73 (a) The entry in the death register is somewhat suspicious because for the months of January and February, there have been no deaths but in the month of March, the witness starts with Sl No 13 and in the month of April the serial number is 15 and in the month of May there are no deaths, yet the witness has started the serial number from 13 in the month of August 1961 In Ex P133, the death extract which is a duplicate of the death register, the name is mentioned as Yatta In view of these discrepancies, and had the wife of the alleged dead person, been examined, there may not have been any difficulty in accepting the evidence

16 PW98 Maridevaru is the Manegar of Hanur He speaks to the death of the person in Sl.No 28 in Ex P45 Siddananjegowda, son of Boregowda and he has stated that the entry in the death register is at Ex P93 (a). It would have been better had the petitioner examined the close relations of this dead person but as PW98 and PW93 state they knew that person and they say that he is dead, I accept the evidence The death of Sl No 218 in

Ex P45 Nagasetti, son of Venkataiama Setti is said to be entered at Ex P93 (b), a perusal of which shows the father s name as Vankataranga Setti and the age as 85 while the age mentioned in Ex. P45 is 63 years Hence these two entries cannot be said to refer to the same person The death of Sl No 1234 in Ex P47 Venkataianga Setti, son of Narayana Setti is said to be entered at Ex P93 (c) Even though the close relations of the deceased are not examined, the evidence on record in respect of this person could be accepted The death of Sl No 1516 in Ex P47 Chennananjamma, wife of Nanja is said to be entered at Ex. P93 (d) but this entry shows the name of the deceased as Chennanji, wife of Racha and was 80 years old whereas the age as mentioned in Ex P47 is only 63 In view of this discrepancy, I reject the evidence

17 PW 105 Puttamallappa, Manegar, who was under suspension for two years, and who was the petitioner's polling agent, states that the death of Sl No 470 in Ex P116 Khalithamma is entered at Ex P103 (a) Apart from the discrepancy in the age found in these entries, as this witness does not state that he knew her, the non examination of the husband makes it difficult to accept his evidence, although PW 102 Venkategowda professes to be the cousin of Nanjundegowda The death of the person in Sl No 707 in Ex P116 Sathyagal Sidda, son of Hutcha is spoken to by PW 105 but then he has not entered this fact in the death register and in the absence of such an entry I would hesitate to accept in particular this witness's statement

18 In this para, I propose to deal with the evidence in respect of the alleged dead persons about whom there are no documents but only oral evidence and this evidence therefore calls for much closer Scrutiny PW 72 Kunnaraiah a resident of Palya speaks to the death of as many as 14 persons, but surprising that he does not mention the age of any of these persons, and admits in cross-examination that there are a number of persons having the same names as those persons about whose death he has given evidence and it is further stated by him that all these dead persons have left survivors behind them The petitioner would have done well to have examined the near relations of the alleged dead persons, rather than this witness whose evidence, I have discussed earlier and rejected even when it was in respect of persons whose death it was alleged had been entered in the death registers I find it extremely difficult in the absence of any satisfactory documentary evidence to rely upon a witness of this type who it must be mentioned did not impress as truthful

in holding that all the persons mentioned by him are as a matter of fact dead, especially so when the witness himself admits that there are any number of persons having the same names as those about whose death he has spoken

18 (a) In respect of the alleged death of three persons at Sathyagal, two witnesses PWs 68 and 70 have been examined PW 68 speaks to the death of two persons whereas PW 70 refers to the one Sl. No 1656 in P 57 (a), who is said to be his relation PW 68 admits that there are a number of persons who have the same name as Hombale Sl No 708 in Ex P 27 one of the persons alleged to be dead As regards Kallare Sl No 1108 P 56 (a) he admits that the so-called dead person has a son by the same name and yet he emphatically denies that there was any other person by the name Kallare, it may be mentioned here that this witness had been hauled up for theft In these circumstances I would hesitate to accept his evidence and as such the identity of the alleged dead person is not established In respect of the alleged dead person S. No 76 in P 31 at Dhanagere, PW 80 is examined, who is a very distant relation and his evidence discloses that nearer relations of the alleged dead person are available In these circumstances I refuse to accept his evidence In respect of the alleged dead persons at Palya *viz* Sl Nos 2, 10, 196, 206, 251, 400, 602, 741 and 801 in Ex P 29 and Sl Nos 1453 in Ex PW 23, P 72 the Manegar has been examined No explanation is offered as to why the death of these persons is not mentioned in the death registers This Manegar was expected in the ordinary course of his official duties to have mentioned the same in the death registers and having failed to do so, his oral testimony would be of little or no value at all even though some more witnesses *viz* PWs 71, 86 and 96 have also been examined to corroborate PW 72 to some extent I have hesitated to accept this evidence because of the presumption in favour of the Electoral Rolls and the absence of strong and reliable evidence establishing the identity of the dead persons with the names mentioned in the Electoral rolls coupled with the absence of documentary evidence and the non-examination of blood relations of the alleged dead persons In respect of Sl No 1920 in Ex P 33, PWs 71, 86 and 96 are examined and the same argument as above holds good

18 (b) PWs 76, 77 and 78 are the witnesses who speak to the death at Tellanur of the persons mentioned in Sl Nos 189, 321 and 580 in Ex P 35 and Sl No 1312 in Ex P 37 PW 76 has admitted that he is a very distant relation of Sl No 189 in

Ex P 35 but says that there are blood relations of the alleged dead person They are not examined The same is the case with PW 78 who started first saying that the deceased Sl No 1312 in Ex PW 37 was his father-in-law but in cross-examination he admitted that the deceased's son had married his first cousin *viz* his father's elder brother's daughter Somehow or the other, I am not impressed by his evidence As regards Pw77 who speakes to the death of his alleged servant Sl No 321 in Ex P35 except his bare oral statement, there is absolutely nothing else to show that person was his servant and that he is dead

18(c) Pws 62, 63, 64, 65, 66, 67, 69, 73, 74 and 75 speak about the death of persons at Madhuvanahalli and Doddinduvadi *viz* Sl Nos 1485 in Ex P20, Sl. Nos 1722 and 1760 in Ex P23, Sl Nos 2756, 2873 and 2942 in Ex P25, Sl Nos 61,119,275 and 283 in Ex P39, Sl Nos. 867,876,1112, 1275 and 1334 in Ex P58 (a), and Sl. Nos 1508, 1607, 1629, 1748, 1759,1764 and 1815 in Ex P41 PW 73 has spoken to the death of as many as six persons and there is no denying the fact that there is illwill between him and the respondent Hence his evidence in the absence of any documentary evidence, and in the absence of the examination of any blood relations of the alleged dead persons, would be unsafe to accept As regards the evidence of PW62, at the pain of repetition it has to be mentioned that as village manegar he was bound to enter the death of these persons in the death registers meant for that purpose and he would have certainly done so had he learnt or known anything about the death of these persons as he now comes-forward and professes to know about them PW64's evidence in respect of the death of Sl No 1722 in Ex P23 can be accepted as this person is no other than his own aunt (maternal uncle's wife) but his other evidence in respect of Sl No 1760 in Ex P23 cannot be accepted by any stretch of imagination as there are a number of persons of this name in the village in his community as stated by PW63 also PW69's evidence in respect of Sl No 2873 and 2942 in Ex P25 cannot again be accepted as he admits that there are a number of persons by this name It may be remembered that the other evidence of this witness in respect of his alleged nephew who was undergoing imprisonment is not accepted PW74 speaks to the death of the person mentioned in Sl No 876 in Ex P58 (a). The allaged dead person was residing in a different locality altogether and belonged to a differnt sub-caste This witness was cultivating the respondent's father's land without paying rent but has been taken back and therefore he would have some grouse against him Hence his

evidence to would be tainted and not safe to be accepted PW75 states that the son of the person mentioned in Sl. No 1275 in Ex P58 (a) was working under him Nothing would have been easier for the petitioner than to have examined the son himself In the absence of such evidence, I would not accept the evidence of PW75 PW66 speaks to the alleged death of the persons mentioned in Sl No 1334 in Ex P58 (a), Sl Nos 1364 and 1815 in Ex P41 But his cross-examination discloses that there are a number of persons in his village and in his community having the same names as the alleged dead persons and it is also in his evidence that the alleged dead persons have left behind them close and near relatives As these relatives have not been examined, I feel it difficult to accept his solitary evidence PW67 speaks in respect of the alleged death of the persons mentioned in Sl. No 1508 and Sl No 1748 in Ex P41 It is not known as to why the near relations of these alleged dead persons, though alive, have not been examined Pws 64 and 65 who reside in the same street as PW 67 have not spoken about the alleged death of these persons and as such I feel it may not be correct to accept his evidence PW65 speaks to the alleged death of Sl Nos 1607, 1629 and 1759, in Ex P41 He also states that these alleged dead persons have left behind very close relations and they have not been examined In view of the fact that there may be some ill will between this witness and the respondent, as respondent's father's garden has not been leased out on Gutta to this person even though he was a tenant for 10 or 12 years, and what is more and according to this witness there are a number of persons alive having the same names as the alleged dead persons, I feel it difficult to accept his evidence In respect of the death of Sl Nos 116, 200, 324, 352, 799, 928, 997 in Ex P59(a) and Sl. Nos 1114 in Ex P43, Pws 88, 89 and 90 have given evidence Pw 88's evidence was rejected by me in respect of the alleged death of a person mentioned in Sl No. 857 in Ex P59(a) even though he claimed that person to be his father whereas the entary in the Electoral roll showed that person was a woman, and as such when the witness claims the person in Sl No. 799 of Ex P59(a) as his mother's brother's wife, I refuse to accept his evidence because the impression he gives is that he is willing to speak to anything as long as it suits the purpose of the person who called him as a witness I also reject his evidence in respect of the alleged death of a person mentioned in Sl No 928 in Ex P59(a) Pw89 speakes to the alleged death of Sl No 899 and 997 in Ex P59(a). Even though the person mentioned in Sl No 899 is said to be his brother-in-law, as according to him, the deceased has left behind his son and

widow, I feel they would have been the best witnesses As regards Sl No 997 in Ex P59(a) she is also survived by two sons, and they have not been examined Pw89 is only a distant relation He further states that there are a number of persons in his village having the same names as the alleged dead persons Pw90 Siddappa speaks to the alleged death of Sl Nos 116, 200, 324 and 352 in Ex P59(a) This witness was the counting agent of the petitioner's father in the Taluk Board Elections in 1960 He had also contested the Assembly seat in the 1957 general elections against the respondent According to him, this dead persons have left behind them, their grown up childern The witness states that he has noted the dates of death of these persons in a hand book but he had not brought that book to the court According to him, apart from the above four persons, he has also noted the death of some other 7 or 8 persons but was unable to give their names To say the least this witness does not infuse confidence and I have no hesitation in rejecting his evidence His further answers "I do not know if the village panchayath has refused permission to Pws 88 and 89 for putting up a construction in the village limits Pws 88 and 89 have now put up sheds It is not true that I took up the cause of these Pws and instigated them to put up the sheds inspite of the refusal by the panchayath", and his answer in the re-examination that he had learnt about the death of the above persons from his enquiries, clearly establishes that he has no personal knowledge and that PWs 88 and 89 may be giving avidence at his instance

18 (d) About the alleged death of persons at Kongarahalli, *viz*, Sl Nos, 694 in Ex. P 43, 941 and 1272 in Ex. P 60 (b) and 1807, 1912, 2062, 2320, 2340 and 2393 in Ex P 61 (a), PWs 81, 82, 83 and 84 have given evidence PW 81 speaks to the alleged death of Sl Nos. 1807 and 1912 in Ex P 61 (a) According to him, the person mentioned in Sl No 1807 was his younger sister and aged about 45 years but the age mentioned against this serial number is 56 years and according to his own statement he, the witness, is about 48 years His further evidence is that this woman died in confinement This looks improbable in view of the age mentioned against the serial number As regards Sl No 1912, the witness claims that person to be his "Dhayadi" The witness has further stated that there are a number of persons in the village having the same names and this makes his evidance improbable and unacceptable PW 82 speaks to the death of Sl Nos 2062, 2320 and 2340 in Ex P 61 (a) His evidence is that the person mentioned in Sl No. 2062 was his mother-in-law,

and that he attended the funeral of the person mentioned in Sl No 2320, and the person mentioned in Sl No 2340 in Ex P 61 (a) was his neighbour According to this witness Madi, wife of Channamalla was his neighbour A perusal of Ex. P 61 (a) discloses that this witness's name is not found anywhere near the residence of this Channamalla This obviously means that he is speaking a falsehood As such I refuse to accept his evidence in respect of Sl No 2340 especially when near relations of the alleged dead person were available and they have not been examined In respect of Sl No 2320 the same comments apply, but in respect of Sl No 2062 as the witness says that she was his mother-in-law, even though I have rejected his evidence in respect of the other two, I accept his evidence. PW 83 Hoomadaiah who was the petitioner's election agent, speaks to the alleged death of Sl Nos 2393 Dasa, son of Chikkavenkata *alias* Hanuma, in Ex P 61 (a) This witness does not speak to the caste of the alleged dead person but gives his age as 50 or 51 years, whereas in Ex P 61 (a) against this serial number, the age is shown as 59 years There is also his evidence that the deceased left behind him his widow and daughter These persons have not been examined in these circumtances I am unable to accept his evidence PW 84 Chamegowda, the counting agent of the petitioner's father in the Local Boards election, and the counting agent for the Congress candidate in the 1962 genaral elections, refers to the alleged death of Sl Nos 694 in Ex P 43, 941 and 1272 in Ex P 60 (b) According to him Sl No 694 was his cousin-in-law (wife's father's sister's son) and he died in a car accident The petitioner could well have summoned the police records and could have also examined the closer relatives of the alleged dead person The person noted against Sl No. 941 in Ex P 60 (b) is said to be a distant relation and Sl No 1272 was the dhobi of this witness Even though the witness has denied certain suggestions that warrants of the civil court were pending against him in which the respondent was appearing for the opposite side and that in this behalf he bears a grudge against the respondent, the witness admits that he and others had been charge-sheeted for having assaulted a Forest guard I may mention that I was not impressed by the witness. It is clear from his evidence and Ex P 60(b) that these allaged dead persons have left near relations behind them They have not been examined and therefore this evidance is rejected

18 (e) PWs 92, 93 and 94 speak to the alleged death of persons at Hanur village, noted against Sl. Nos 119 and 765 in

Ex P 45 and 1082, 1108 and 1429 in Ex P 47 PW 93 Madappa resides in a different locality than the persons whose alleged death he speaks to The better evidence for the petitioner would have been summon the inquest proceedings as Sl No 765 is said to have died by electrocution, and as this has not been done his testimony in this behalf cannot be accepted As regards Chikkamma, Sl No 119 PW. 93 states that she has left behind a son, aged 35 years and no explanation is offered as to why he has not been examined. PW 92 Mahanthadevaru refers as to the alleged death of Sl Nos 1082 and 1108 in Ex P47 This witness resides in a different locality It is also his evidence that the alleged dead persons are survived by their children but have not been examined His further evidence "I do not know how many other persons have died in my village and the time of their death' creates a doubt as to how he remembers the death of only these persons PW 94 Puttamadaiah speaks to the alleged death of persons noted against Sl Nos 935 in Ex P. 45, 1429 and 1516 in Ex P47 This witness at first denied that he was PW. 93 's tenant but admitted later that he was his tenant for one year His further evidence is that the person referred to in Sl No 935 in Ex P45 is survived by his wife and two sons These persons have not been examined The witness admits that there are a number of persons in the Naidu community at his village having the same names as the dead person and his father In the above circumstances, his evidence as that of PWs 92 and 93 becomes doubtful and difficult to accept Therefore, I am unable to accept the evidence of PWs 92, 93 and 94 as conclusively proving the death of the persons mentioned by them

18 (t) PW 85 speaks to the alleged death of the person mentioned in Sl No 72 in Ex P 47 at Hulipura, who according to the witness was residing opposite to his house. The witness states that that person is survived by his three sons and widow the eldest son being 30 years of age, but he is unable to give the caste to which the alleged dead person belonged In view of this statement, and the non-examination of the sons or the widow, I would hesitate to accept his evidence.

18 (g) PWs 100, 101, 103 and 104 speak to the death of persons mentioned against Sl Nos 699, 758 in Ex P 116 and Sl Nos 910 and 1234 in Ex P 51 PW 100 Channabasavegowda speaks to the death of Sl No 910 in Ex P. 51, who according to him was the wife of Doddaveeregowda a distant relation of his (father's first cousin's sister married to Doddaveere-gowda's brother's son Kalegowda) He admits that there are a number of persons having the same name as Lingamma and there

are 3 or 4 persons of the name Doddaveeregowda PW 101 Honnanaika speaks to the alleged death of the person mentioned against Sl. No. 1234 in Ex P51 and claims that he is his son and further states that he is residing two houses away from that of his father But a perusal of Ex. P 51 shows that the name of this witness is not to be found anywhere near about the house of the alleged dead person, but only the name of one Ponnanaika, son of Golianaika is found, which in no way could be taken as that of this witness PW 103 Basavalinga refers to the alleged death of his wife whose name is mentioned at Sl No 758 in Ex P 116 But surprising as it may seen, his name does not find a place anywhere near his alleged wife's name in the voters' list Ex. P 116 PW 104 Chikkasidda speaks to the alleged death of his elder brother whose name is mentioned against Sl No 699 in Ex P 116 to which I have already referred to It is curious to note that the name of this witness is not to be found as voter in Ex P 116 near about the house of the alleged dead person. In the above circumstances, I hesitate to accept the oral evidence of PWs 100, 101, 103 and 104

19 As regards Issue No 2 that persons whose names should have been omitted in the Electoral rolls and who should not have been given ballot papers as per Part III of each of the electoral roll, it is seen that, apart from the serial number, the name of the person is also mentioned in part III This has been done to exclude any mistakes as to the person who should be omitted, in other words, the identity is also sought to be established when the name of the person is mentioned against the Serial number in part III This being so, it would be futile to argue that the guiding factor for a Presiding or Polling officer is the serial number and not the name If it was the serial number that had to be excluded from the electoral roll, I see no reason as to why the names should also have been mentioned in part III, unless it be to exclude any possibility of any mistake or doubt in respect of the identity of the person whose name should be excluded from the voter s list If there is any discrepancy in the name against the serial number, between Part III and the voter's list, or in a case where two names are identical in all respects, and one's asked to be struck off, possibly because of repetition, it was well within the discretion of the Polling officer, after satisfying himself about the identity of the voter, to have issued a ballot paper, and such votes cannot be considered as void

20 In respect of the allegation that votes of persons who were noted in the electoral rolls as persons whose votes should be

omitted were taken and counted as valid votes in favour of the respondent, the petitioner confined himself to the following marked Electoral rolls, *viz* , Exs P 20, 23, 25, 29, 33, 43 and 57 (a) The following serial numbers and names of persons mentioned against them, Sl Nos 977, 996, 1014, 1032, 1041, 1050, 1071, 1156, 1176, 1177, 1179, 1184, 1199, 1241, 1244, 1252, 1258, 1264, 1266, 1313, 1333, 1351, 1360, 1361, 1374, 1375, 1382, 1435, 1469, 1497, 1498, 1542, 1552 and 1592, find a place in part III of Ex P 20, and ballot papers should not have been issued to them But a perusal of Ex P 20, shows that ballot papers have in fact been issued Therefore the votes of these persons are void As regards the names against the serial numbers 998, 1000 and 1005 and 1006 mentioned in part III of Ex P20, it is seen that in Ex. P20 voter's list, identical duplicate names are found and ballot papers have been issued to only one of them and one of the polling officers, *viz* , PW33 has stated that by mistake he has noted the ballot paper number against the serial number and name of the peison who had to be omitted as per Part III, but according to him he has not issued a ballot paper to the person who should have been really omitted Therefore, though there has been some mistake on the part of the polling officer, it cannot be said that the votes of this type are void In part III of Ex P23, the following serial numbers and names noted against them had to be omitted from the voter's list and ballot papers should not have been issued to them Sl Nos 1614, 1629, 1687, 1723, 1751, 1752, 1823, 2048, 2103 and 2161, but in fact ballot papers have been issued as could be seen from the voter's list These are therefore void votes As regards Sl No. 1859 in part III of Ex P 23, PW 33 states that it was by mistake that he noted the ballot paper number against that Sl No in the voter's list when he should have really noted it against Sl No 1857 having the same identical name I see no reason not to accept his explanation In this behalf there is also the evidence of RW 3 As per part III of Ex P 25, ballot papers should not have been given to the following serial numbers and names mentioned against them, 2435, 2487, 2488, 2602, 2606, 2676, 2698, 2700, 2842 and 2843 but as a matter of fact ballot papers have been issued, and hence they have to be held as void votes But as regards Sl No 2992 Siddasetti Nanjasetti mentioned in part III of Ex P 25, his name appears again at Sl No 2998 and no ballot paper has been issued to that number, and RW 8 has stated that he did exercise his franchise and when asked to read the names against the serial numbers, after reading them, he further stated that these two names appearing against Sl Nos 2992 and 2998 both refer to him I see no reason to

disbelieve his evidence It is because of this that Sl. No 2992 is mentioned in part III and as one ballot paper has been issued in respect of Sl Nos 2992 and 2998 referring to one and the same person, his vote cannot be saidto be void. As regards Sl No 2371 in part III of Ex P 25, the name reads Doddasidda, whereas in the voter's list Ex P 25 the name against that serial number is Doddasiddi and described as a woman Therefore this vote cannot be said to be void So far as Sl Nos 2892 and 2994 mentioned in part III of Ex P 25, it is seen from the voter's list that though ballot papers number are mentioned against these serial numbers, they have been struck off thus indicating that no ballot paper was issued to them In respect of Sl No 664 mentioned in part III of Ex. P 43, ballot paper has been issued as per the voter's list Therefore the vote is void As regards Sl No 679 in Ex P 43, it does not find a place in part III and therefore not a void vote So far as Sl Nos 607 and 979 mentioned in part III of Ex. P 29, it is seen that ballot papers have been issued to these serial number in the voter's list because the names against these serial numbers as mentioned in the two, differs, and hence they cannot be held to be void votes In part III of Ex P 33 these serial numbers are found 1296, 1980, 1520 and 1943 but a perusal of the voter's list discloses that ballot papers have been issued to these serial numbers which bear names other than those mentioned in part III against the same serial numbers Hence these votes are not void As regards Sl No 1732 mentioned in part III of Ex P 57 (a) it is seen from the voter's list that a ballot paper has been issued, but the name differs Therefore I am unable to hold that this is a void vote

21 The petitioner led in evidence in respect of 104 alleg ed deadpersons, but I have accepted the evidence in respect of only six persons *viz* Sl No 202 in Ex P59 (a), Sl. No 1923 in Ex P33, Sl No 28 in Ex P 45 Sl No 1234 in Ex P 47, Sl No 2062 in Ex P 61 (a),and Sl No 1722 in Ex P23. As regards the disenfranchised persons in part III of the Electoral Rolls Exs P 20,23,25,29, 35, 43 and 57(a), my finding has been that votes of only 34 in Ex P20,10 in Ex P 23, 10 in Ex P 25 and 1 in Ex P43, are void The total number of the invalid and void votes would therefore be 61, whereas the difference of votes between the petitioner and the respondent is 67 Assuming for a moment that all these 61 votes have gone to the respondent, it would not be correct to say that it has materially affected the result of the returned candidate, *viz.* the respondent Therefore, I do not think it necessary to look into these votes to find out in whose favour they have been cast The petitioner, it may be remembered, as discussed earlier, came up with an

allegation that votes of the alleged dead persons and disenfranchised persons were said to have been caused to be cast in favour of the respondent, and in his cross examination he admitted that he knew the names of 150 alleged dead persons as also the names of the persons who gave him this information at the time of filing the list of the alleged dead persons in court, and he had by that time already applied to the Registrar of Births and Deaths for death extracts in respect of 30 or 40 persons and he had also applied to the Tahsildar of Kollegal for the said extracts It is not known why these persons, who it is said, gave him the information, are not cited and examined as witnesses According to the petitioner, his informants also told him that the votes of the above persons had been cast in favour of the respondent Ordinarily one would not have known, because of the secrecy of the ballot, in whose favour the votes have been cast But when the petitioner had been given definite information about the trend of the votes stated above, the examination of the informants would have assisted the Tribunal to a large extent in knowing whether the allegation of the petitioner is true, or not, and this evidence would also have established to some extent whether there was any truth in the election that such votes were caused to be cast in favour of the respondent As regards the votes of disenfranchised persons, it has again to be mentioned that the informants of the petitioner *viz* Nagabooshana and Mahadevappa of Madhuvanhalli and Kendagannaswami of Kollegal, have not been examined as witnesses even though these were the persons who gave him the information as to how and in whose favour these votes were cast The non-examination of the above persons would lead to one inference that had they been examined they may not have supported him In this view of the matter, the bare allegation of the petitioner that he believes that these votes had been cast in favour of the respondent could hardly be accepted

22. It would be appropriate to reproduce the observation of his Lordship the Chief Justice in the decision reported in 1954 Supreme Court 210 (Jagan Nath Vs Jeswant Singh and others)

> " It is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of law."

In the decision reported in 37 Mysore Law Journal 196 (B. Basavaiah Vs B Rachaiah) their Lordships have observed

> " While it is true that in a petition where the seat is claimed on the basis of wrong, counting or scrutiny, it

may not be possible for the petitioner to conclusively establish his case without a recount, sanctity of elections requires that he must make out a *prima facie* case before a recount can be ordered In other words, what is required of him is to make out a case for recounting and not a case for declaring him elected We see nothing either in the principle or reported decisions which entitles a petitioner to demand a recount as a matter of right The Returning officer is presumed to have acted according to law Such a presumption can be displaced only by evidence *prima facie* showing either mistake or misconduct on his part which is likely to have materially affected the result of the election This position is well established by a catena of decisions".

In the decision reported in A I R 1954 Supreme Court 513 (Vashist Narayan Sarma *Vs* Dev Chandra) it is observed —

"The words 'the result of the election has been materially affected' indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate It cannot be held that the mere fact of the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes, must lead to the necessary inference that the result of the election has been materially affected That is a matter which has to be proved and the onus of proving it lies upon the petitioner, and on the petitioner failing to adduce satisfactory evidence to enable the court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour, and would allow the election to stand".

From these observations, it is clear that a Tribunal shall not lightly interfere with the result of an election or its sanctity, merely because the petitioner is able to show that some void and some invalid votes have been received, without further proof except his bare statement that these votes were cast in favour of the respondent. The other thing that has to be borne in mind is that it is not a mere subtraction or addition of votes that decides the issue, but there must be evidence to show that the improper reception of these votes has materially affected the result of the election.

The petitioner has failed to establish a *prima facie* case, and therefore not entitled to any relief

23. As regards I A Nos 8 and 9, no separate order is called for in view of may findings as stated above Hence they are rejected

24. My findings on the several issues in the case are as follows.—

Issue 1(*a*)—Votes of only Six dead persons have been proved to have been cast by personation.

1 (*b*)—No finding is called for in the circumstances of the case

Issue 2—Only votes of 55 disenfranchised persons have been cast It is not necessary to give a finding on the latter part of this issue

Issue 3—There were more counting tables at the time of counting, than the number of petitioner's counting agents, but valid votes of the petitioner were not declared in favour of the respondent

Issue 4—In the negative.

Issue 5—The sealing of all the ballot papers was done on 2nd March 1962 and the further finding is that there has been substantial compliance with the Rules

Issue 6—Deleted

Issues 7 and 8—Vide order dated 30th June 1962 holding on Issue 7 that the petition is not defective for the reasons urged in paras 11 and 13 of the respondent's statement of objections, and on Issue 8 that the election petition is maintainable as it does not suffer from omisson of material facts.

Issue 9—The petitioner is not entitled to be declared as the successful candidate as the respondent's election has not been declared to be invalid

25 In the result, this petition is dismissed with costs Advocate s fee Rs 500

Dictated to the Stenographer and transcript pronounced in open court on the 2nd August 1963

S A PEERAN,
Member,
Election Tribunal

BEFORE THE ELECTION TRIBUNAL, IN MYSORE, MYSORE.

K P No 4 of 1962

Petitioner		Respondent
H Nagappa	Vs	G. Venkate Gowda

MEMO OF COSTS

	For petitioner.	For respondent.
Court fee on petition		
Court fee on application	5 75	5 25
Court fee on exhibits	3 00	
Court fee on process	200 00	42 00
Batta to witnesses	992 20	213 48
Cost of copying sheets	4 62	
Advocate's fee	500 00	500 00
Total	1705 57	760 73

It is ordered that the petitioner do pay Rupees Seven Hundred and Sixty and naye Paise Seventy Three only to the respondent being the costs incurred in the proceedings

S A PEERAN,
Member, Election Tribunal, Mysore

ANNEXURE

BEFORE THE ELECTION TRIBUNAL, MYSORE,

Dated 30th June 1962

Present

Sri M. Hanumanth Rao, M A, H C.S. District Judge.

Election Petition 4/1962

Petitioner —
H Nagappa

Vs.

Respondent —
G. Venkate Gowda

Findings on Issues 7 and 8

1 This is a petition filed under Section 80 of the Representation of the People Act, 1951, questioning the election of the respondent from the Palya Constituency, to the Mysore Legislative Assembly, held in February 1962

2. On the basis of the petition, and the written statement, the following issues were framed *inter-alia* —

(7) Whether the election petition is defective for the reasons urged in paras 11 and 13 of the respondent's statement of objection If so, what is its effect ?

(8) Whether in the absence of material facts as required under law the election petition is maintainable ?

The learned counsel for the respondent requested the Tribunal to give its findings on the above issues in the first instance. Hence arguments were heard.

3. The respondent, in his objection statement has stated in para 11 that since the grounds urged for setting aside the election in question are wholly lacking in material facts, and the omission is deliberate, the petition is defective and hence the pleadings in their present form are to be struck out as they tend to prejudice and embarass the respondent in the trial of the petition, and since the petition does not disclose any cause of action, it has to be dismissed *in-limine* It is further stated that the petitioner does not seek to maintain the petition under Section 83 (1) (b) and the absence of the required affidavit is conclusive of the matter In para 13, it is urged that the petition is further defective in view of the non-compliance with the mandatory provisions in regard to the verification of the contents of the petition

4. The grounds urged in the petition for setting aside the election are —

(*i*) Votes of persons who were dead long before the date of election, and of persons suffering imprisonment in jail, have been caused to be cast by personation, and such votes are said to have been cast in favour of the respondent,

(*ii*) Votes of persons who are noted in the electoral list as persons whose votes should be omitted are taken and counted as valid votes in favour of the respondent, and this is evident from the marked electoral list in every polling booth and all such votes which are in law invalid which are now counted in favour of the respondents are to be deducted from the votes counted in favour of the respondent,

(*iii*) At the time of counting, as there were more counting tables than the number of petitioner's agents, many valid votes of the petitioner, are said to have been put into the Cycle box and are subsequently counted in favour of the respondent,

(iv) Many votes which according to law should have been declared as valid votes in favour of the petitioner are declared in favour of the respondent, against law

(v) After counting, the sealing of all papers was not done on the same day and is said to have been done on 1st March 1962, and

(vi) The respondent has incurred election expenses in excess of what is allowed under law,

5 From the petition, it is clear, that the petitioner does not allege any corrupt practise on the part of the respondent As regards the ground No 6 mentioned above, the learned counsel for the petitioner, in the course of arguments, frankly conceded that he does not press it, and withdraws the said allegation Therefore, issue No 6 becomes unnecessary

6 The point for consideration is whether the petition is defective for want of material acts and particulars, The learned counsel for the respondent, relying on the decision reported in Hari Vishnu Kamath *Vs* Election Tribunal, Jubbalapore and another (AIR 1958 Madhya Pradesh 168) contended that this petition is wanting in material facts In that decision, it has been laid down as follows —

> "The word 'material' in "material facts" means necessary for the purpose of formulating a complete cause of action and if any one material fact is omitted the statement of claim is bad It is liable to be struck out".

It has been further held.

> " Thus the material facts under the Act are what under the Code of Civil Procedure is the cause of action which has to be stated with completeness and unless there is complete cause of action, the plaintiff is not entitled to judgment. Indeed the plaint can be rejected if it does not disclose a complete cause of action. Where, however, the cause of action involves narration of particulars, those particulars have to be supplied with sufficient clarity and precision They should not be vauge or indefinite "

The learned counsel for the petitioner contended that according to Section 83 (1) of the Act, an election petition (a) shall contain a concise statement of the material facts on which the petitioner relies, and clause (b) of this Section which calls for settingforth full particulars of any corrupt practice that the petitioner alleges does not apply to the present petition as he has not alleged any sort of corrupt practise against the respondent and the petitioner, in his petition has given a concise statement of the

material facts on which he relies The learned counsel further contended that the petition does not suffer from any defect, and no material fact necessary for the decision of the petition has been omitted, and hence the petition is maintainable There is much force in this contention The petition does contain a concise statement of the material facts on which the petitioner relies The respondent has urged that full particulars of those material facts have not been furnished.

7 The point now for consideration is whether the facts stated in the petition disclose a complete cause of action and whether the cause of action in this case involves the narration of particulars with sufficient clarity and precision. Cause of action means every fact which it would be necessary for the plaintiff or a petitioner to prove if traversed in order to support his right to the judgment, but not every necessary piece of evidence The Indian Evidence Act defines "fact" as follows Fact means and includes (1) anything, state of things, or relation of things, capable of being perceived by the senses and (2) any mental condition of which any person is conscious The petitioner in the petition has enumerated the facts which he wants to prove It is true that he has not disclosed the names of the persons who are dead, and who are suffering imprisonment, but who have been impersonated and votes caused to be cast Now, we have to see whether the non-disclosure of the above names is an omission of the material fact. In A I R 1958 Madhya Pradesh 168, their Lordships have laid down as follows at page 172 —

> "Unless the particulars are sufficient, an issue cannot be set down for trial In asking for particulars, the court is not entitled to ask for the disclosure of evidence with which the material facts or the particulars are to be proved The same scheme as we have pointed out above also is to be found in the Act Here too material facts are kept separate from particulars and the particulars have to be full and sufficient and not vague or indefinite"

In the petition, para 3 and its sub-paras 1 to 6, contain the cause of action, or the bundle of facts which the petitioner seeks to establish and on the strength of which he claims a decision in his favour The learned counsel for the respondent has confused between the material facts and particulars Particulars have to be furnished only when there is an allegation of corrupt practice In this case, it is not so The details or more particulars of the material facts alleged in the petition will be only matters of evidence The petitioner has put the material facts all together

on which he relies and thus the requirements of the Act are complied with. This petition does follow the scheme which the Act has in view and in this sense it must be held to be properly drafted. It has given all the material facts on which the petitioner challenges the election of the respondent, by adducing evidence.

8 Now, coming to the non-compliance with Cl (c) of sub section 1 of Section 83, urged by the respondent, it may be pointed out that the petitioner has verified the petition as follows.

> "I, petitioner H. Nagappa, solemnly affirm that what is stated in paras 1, 2, 3, 4, 5 and 6 is true to the best of my knowledge, information and belief."

This is the usual form in which verifications of the peladings are made No doubt, Section 15(2) of the Code of Civil Procedure lays down that the person verifying shall specify by reference to the number of paragraphs of the pleadings what he verifies on his own knowledge, and what he verifies upon information received and believed to be true. Even under the law before the Amending Act XXVII of 1956 when non-compliance with the provisions of Section 83 could be penalised with the dismissal of the petitioner, it was held that the Tribunals had the power to allow amendments for rectification of defects in verification Now, there is no penality provided for non-compliance with Section 83 and the power of the Tribunal to permit an amendment of the verification is clear An omission of, or defect in the verification is only an irregularity curable by amendment and it cannot be a ground for rejection or dismissal I therefore direct the petitioner to amend the verification as required by law.

9 Issue No 6 is deleted, and my findings on issues 7 and 8 are as follows:

Issue 7: This petition is not defective for the reasons urged in paras 11 and 13 of the respondents' statement of objections

Issue 8 The election petition is maintainable as it does not suffer from omission of material facts

Dictated to the Stenographer, the transcript pronounced in open court this the 30th day of June, 1963

Sd / M. HANUMANTH RAO,
District Judge (Election Tribunal).

By Order,

PRAKASH NARAYAN,
Secy to the Election Commission